

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

JAMES J. SHADOAN, <i>et al.</i> ,	)	
	)	Case No. 1:20-CV-02538-TWP-MJD
Plaintiffs,	)	
	)	Judge Tanya Walton Pratt
v.	)	
	)	Magistrate Judge Mark J. Dinsmore
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

**UNITED STATES' UNOPPOSED MOTION TO WITHDRAW  
MOTION TO DISMISS AND FILE AMENDED MOTION TO DISMISS**

Defendant United States of America moves to withdraw its Motion to Dismiss and supporting documents (Docs. 16-18), and requests that the Court allow it to file an Amended Motion to Dismiss by January 25, 2021, with Plaintiffs' response to be filed by February 16, 2021, and in support thereof, states as follows:

1. On September 30, 2020, Plaintiffs filed a Complaint seeking tax refunds for the 2014, 2015, and 2016 tax years. (Doc. 1).
2. On November 18, 2020, Plaintiffs filed an Amended Complaint seeking the same relief but removing references to Plaintiffs' Sealed Exhibits. (Docs. 2-4, 13).
3. On December 4, 2020, the United States timely filed its Motion to Dismiss the Amended Complaint and supporting documents. (Docs. 16-18).
4. On December 22, 2020, Plaintiffs moved to extend their time to respond to the United States' Motion to Dismiss, and the Court granted the motion, authorizing Plaintiffs to file a response by January 25, 2021. (Docs. 19-20). As of January 19, 2021, Plaintiffs have not filed a response to the United States' Motion to Dismiss.

5. On December 21 and 23, 2020 and January 4, 2021, the United States provided Plaintiffs with account transcripts, certified account transcripts (Forms 4340), a payoff amount for the 2015 tax year, and other responses to Plaintiffs' various inquiries regarding the United States' position and Internal Revenue Service procedures.

6. On January 13, 2021, the undersigned informed counsel for Plaintiffs that, after receiving additional documents from the Internal Revenue Service, the United States had determined that the motion to dismiss had inadvertently contained a misstatement of fact with respect to the 2014 tax year that eliminated one of its arguments in favor of dismissal of Count I of the Amended Complaint. The undersigned provided Plaintiffs' counsel with the newly received document. The undersigned asked if Plaintiffs' counsel would consent to the United States filing a Motion to Withdraw the Motion to Dismiss to correct the misstatement and remove that argument from its brief, as well as resetting the briefing schedule to allow the United States to file an Amended Motion to Dismiss by January 25, 2021, with Plaintiffs' response due by February 16, 2021.

7. On January 18, 2021, Plaintiffs' counsel consented to the United States' proposal and briefing schedule. Additionally, Plaintiffs' counsel noted that Plaintiffs sought a stipulation to strike Count II (2015 tax year) from the Amended Complaint, such that the United States' Amended Motion to Dismiss would seek dismissal only of the remaining Count I (2014 tax year) and Count III (2016 tax year). The United States consented to that stipulation.

8. The United States requests that the Court permit the United States to withdraw its previously-filed Motion to Dismiss and supporting documents, and allow the United States to file an Amended Motion to Dismiss by January 25, 2021 to properly narrow the issues before the

Court. The United States further requests that the Court allow Plaintiffs to file their response to the Amended Motion to Dismiss by February 16, 2021.

WHEREFORE, the United States requests that the Court withdraw its Motion to Dismiss and supporting documents (Docs. 16-18) and allow it to file an Amended Motion to Dismiss pursuant to the briefing schedule outlined above.

Respectfully submitted,

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